
(2000) 08 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18805 of 1998

Gurbhajan Singh

APPELLANT

Vs

Union of India (UOI) and another

RESPONDENT

Date of Decision : 01-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 08 P&H CK 0022

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : K.S. Dhaliwal, for the Appellant; Anil Malhotra, for the Respondent

Final Decision : Allowed

Judgement

R.L. Anand, J.—The Petitioner has filed the present writ petition under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the order dated 9.7.1994 vide which the disability pension of the Petitioner was dis-continued w.e.f. 8.4.1988. The Petitioner has further prayed for the issuance of a writ in the nature of mandamus directing the Respondents to grant him the disability pension along with interest.

2. The case set up by the Petitioner is that he joined the Army on 8.5.1968. On 22.4.1972, he was board out on medical grounds with more than 20% disability and he was awarded temporary disability pension. In the year 1970, the last re-survey medical board was held at Military Hospital, Ambala Cantt, and the Petitioner was informed by the Medical Authority that his disability had been assessed at about 20% for life and, thereafter, he was never advised to be present before- re-survey medical board. The Petitioner had been getting the pension upto December, 1993. However, the pension of the Petitioner was discontinued with effect from January, 1994. The Petitioner made a representation before the authorities and he was informed vide letter dated 9.7.1994 that his pension has been discontinued w.e.f. 8.4.1988. The Petitioner made another representation on 15.2.1997 but he was informed vide letter dated

27.5.1997 that since he had not submitted any appeal against the decision, so no action can be taken at that stage.

3. Notice of the writ petition was given to the Respondents who filed the reply and submitted that the Petitioner was enrolled in the Regiment of Artillery on 8.5.1968 and was invalided out of service due to disease "Sciatica Syndrome(RT)-353" w.e.f. 22.6.1972. He was brought before the invaliding Medical Board on 18.3.1972. The duly constituted medical board viewed that the invaliding disease was aggravated by military service due to stress and climatic conditions of service and assessed the degree of disablement at less than 20% i.e. 15 to 19%, for two years. Disability pension claim was sent to the Chief Controller of Defence Accounts (Pension), Allahabad, for their adjudication and they accepted the disability of the Petitioner at 20% and granted disability pension w.e.f. 22.6.1972 vide pension payment order No. D/5430/72, dated 1.9.1972 for years. On subsequent review, disability of the Petitioner was assessed at 20% and he was granted disability pension up to 7.4.1988. The Petitioner was again brought before the Re-survey Medical Board on 27.2.1988 and his disability was again assessed at 20% by the Medical Board. The re-assessed disability pension claim was forwarded to the Chief Controller of Defence accounts (pensions), Allahabad, on 24.5.1988 but the claim was rejected as the disability was less than 20%. Therefore, the Petitioner is not entitled to the disability pension w.e.f. 8.7.1988.

4. I have heard the counsel for the parties and with their assistance have gone through the record of this case.

5. It is proved on the record that the disability of the Petitioner was earlier assessed at 20% by the competent board. So much so, the Petitioner was given the disability pension. Unilaterally, the disability has been shown below 20% by the Chief Controller of the Defence Accounts(pensions). Allahabad. It has been held in *Faquiria v. Union of India and Ors.*, 1999(2) SLR 690, that when the Accounts Branch without referring the Petitioner afresh to Medical Board reduced the extent of disability at less than 20% and declined to grant disability pension, such action is unwarranted according to law as the Accounts Branch cannot sit over the judgment of Medical experts and comment upon the extent of disability without making reference to high medical Board.

6. In this view of the matter, I allow this writ petition and give directions to the Respondents to release the disability pension to the Petitioner w.e.f. 8.4.1988, within three months from the receipt of copy of this order, failing which the Petitioner shall also be entitled to interest @ 12% per annum. The Petitioner is directed to appear before the rsurvey Medical Board as and when called upon by the authorities.

No costs.